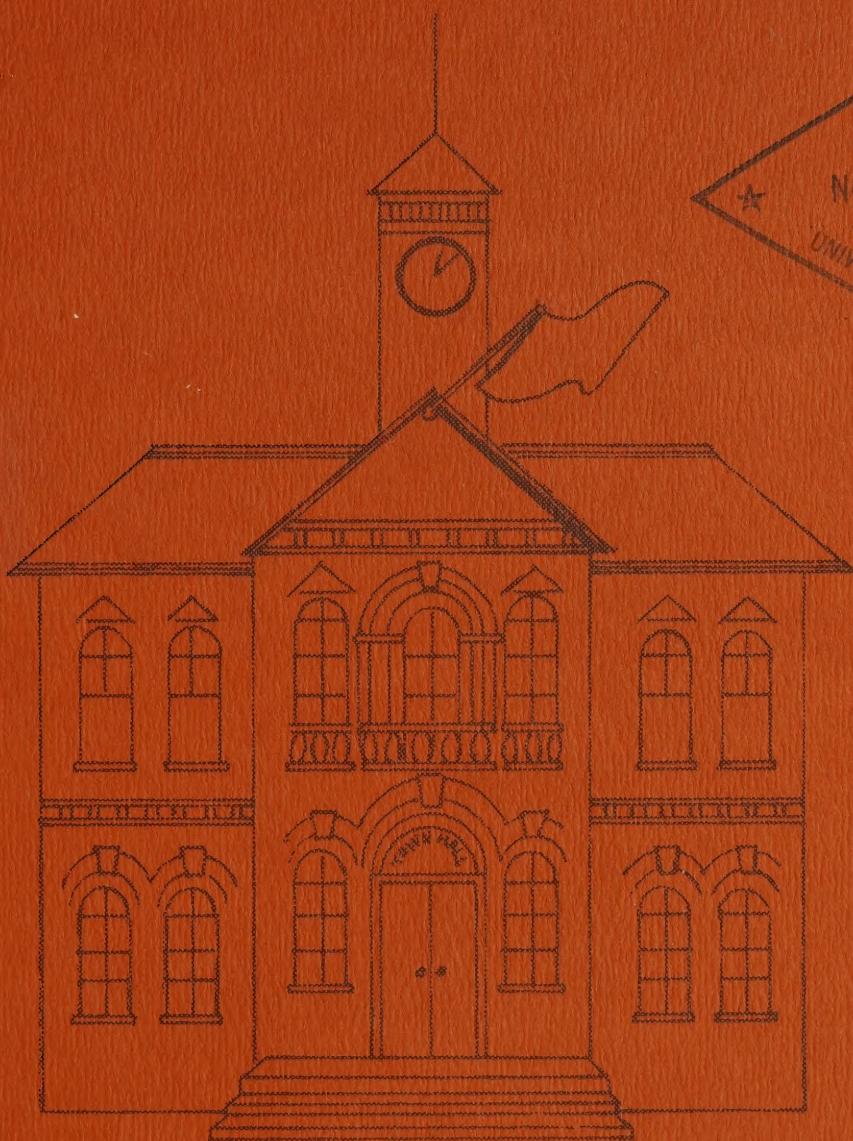


September, 1982

BULLETIN 48

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AMENDMENTS TO *The Municipal Elections Act*



Ministry of
Municipal Affairs
and Housing

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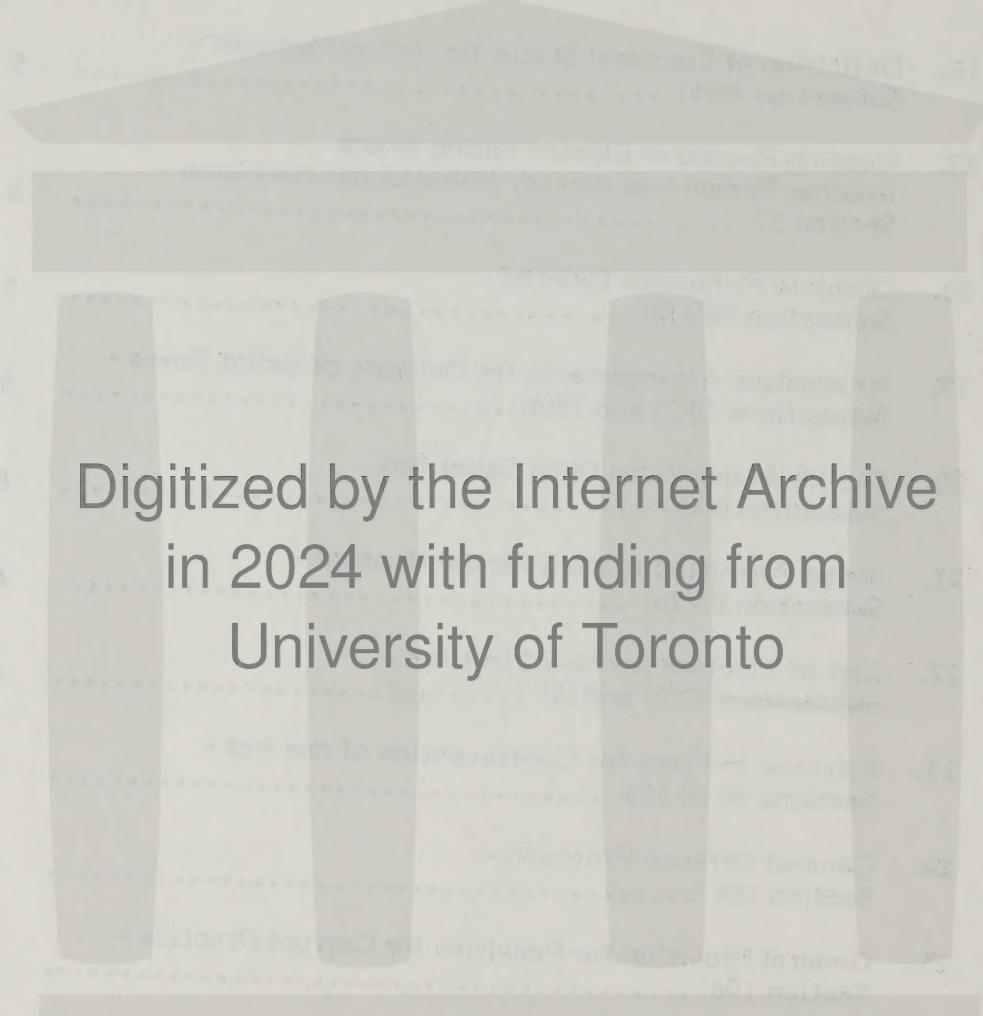
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Introduction

This bulletin will highlight the recent amendments contained in Bill 10 and Bill 119, Acts to amend the Municipal Elections Act and Bill 142, The Assessment Amendment Act, 1981.

Bill 10, which came into effect on April 23, 1982, altered the municipal term of office from two to three years.

Bill 119, which came into effect on July 7, 1982, contained mostly procedural and word change amendments designed to clarify and improve election procedures. The most significant amendment in this Bill dealt with the regulation of election contributions and expenditures.

The Assessment Amendment Act, 1981 legislated changes to Subsections 92 (4) and (5) of The Municipal Elections Act concerning the list of electors for new elections.

The amendments provided by Bill 10 and Bill 142 are specifically noted. All other amendments discussed in this bulletin are set out in Bill 119.

It is suggested that this bulletin be read in conjunction with the Act and the amending legislation.

Copies of the Act and amending legislation are available from:

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This bulletin has been prepared very carefully. Readers are advised, nevertheless, to refer directly to the Act and its amending legislation to ensure accuracy and completeness.

Questions regarding this bulletin may be directed to the Municipal Management Policy Branch, Municipal Affairs Wing at 416-965-7031.

1. Reference to Minister in Act - Section 1, para. 18

Reference in the Act to the Minister is changed from the Minister of Intergovernmental Affairs to the Minister of Municipal Affairs and Housing reflecting the 1981 change in ministerial responsibility for municipal affairs.

2. Replacing Poll Clerks - Subsection 4(4)

This amendment enables the clerk to appoint another person if a poll clerk is unable to perform his duties on polling day. Previously the clerk was only permitted to make a substitute appointment for deputy returning officers.

3. Age of Election Officials - Subsection 4(10)

The amendment adds a new subsection requiring that all election officials must be at least eighteen years old in order that they will be able to administer any oaths required under the legislation. Previously the Act was silent on this matter.

4. Clerk to Control Election Expenses - Subsection 8(1)

The amendment adds the words "and all costs shall be paid on certification by the clerk" at the end of the subsection. This is to indicate clearly that it is the municipal clerk, in his capacity as returning officer, who determines the reasonable expenses incurred in conducting elections including by-elections of local boards, prior to the accounts being paid by the municipal treasurer, or in the case of by-elections noted above, the local board.

5. BILL 10, THE MUNICIPAL ELECTIONS AMENDMENT ACT
Municipal Term of Office - Subsections 9(1) and 10(1)

The amendment to Subsection 9(1) provides that the municipal term of office will be three years, increased from two years.

The amendment to Subsection 10(1) provides that the three-year term will commence at the 1982 elections and municipal elections will be held every three years after that.

The term of office had been under active review for several years. The decision to move to a three year term was based on a variety of considerations including the provision of more time to facilitate long-term planning and a greater continuity in policy matters. Consideration was also given to the reduced costs to municipalities to run elections and to candidates to run election campaigns. It was also determined that a longer term of office may help to increase interest in municipal government not only for prospective candidates but also for the electorate.

Several other provinces have a mandatory or optional three year term for their municipalities.

6. Qualifications of Electors Voting on Money By-laws - Section 16

Section 16 has been amended to simplify the wording. It makes clear that any person who is eligible to be an elector is

entitled to vote on money by-laws. The legislation has reflected this principle since 1977 when the Act underwent major policy and procedural revisions. Prior to that time only property owners, corporate nominees and long term tenants were entitled to vote on money by-laws.

7. Addresses to be Used on Nomination Papers - Subsection 36(1a)

This new subsection has been added to require that the address a candidate puts on his nomination paper and the addresses of electors signing the nomination paper shall be their addresses within the municipality. This amendment is designed to avoid confusion between qualifying and resident addresses which may differ and to simplify the clerk's certification process. A corresponding change has been made to the nomination form (Form 13) which now specifies that the addresses to be listed are within the municipality.

8. Certification of School Support Status of Nominators - Subsection 36(8)

Another new subsection has been added to Section 36 which provides that for the purpose of certifying nominators on a candidate's nomination paper, the clerk is to use the preliminary list of electors, as revised up to the day the nomination paper is filed. This procedural change was necessary because of recent amendments to the Assessment Act and the Education Act.

Prior to these changes the period for altering school support status coincided with the period of revision of the list of electors in the election year and such alterations were made by the clerk. Now the Assessment Act provides that alterations in school support status can be made up until the date for the return of the assessment roll (late December) and the alterations are processed by the Assessment Commissioner. Therefore, to enable the clerk to certify nominators it was necessary to provide a reasonable, but arbitrary cut-off point.

9. Date and Time of Polls - Subsection 41(2)

The amendment makes it clear that the clerk must give notice of the time and date of the regular and advance polls for an election.

10. Complying with Minister's Order for Vote Recorders - Subsection 42(4)

The amendment provides that all persons are required to comply with the provisions of a Minister's Order authorizing the municipality's use of automatic voting equipment.

The prior legislation only stipulated that the municipality must comply with such an order. Many other people who are entitled to attend at election procedures will now also be bound by the provisions of the Minister's Order to ensure the expeditious and accurate conduct of the election.

11. Address to Be Used on Ballot, When Required - Subsection 43(4)

This is a companion amendment to Section 36 of the Act (outlined above). It provides that where it is necessary to include the addresses of candidates on the ballot because of a similarity in names, the addresses to be listed shall be each candidate's address within the municipality.

12. Individual Notices of Location of Poll - Subsections 46(7) and 46(8)

These subsections deal with the individual polling notices sent to electors in municipalities with over 5,000 electors. The subsections have been further amended this year to specify that the notices will include the date and time of the poll as well as its location.

13. Public Notice of Location of Poll for Municipalities With Less Than 5,000 Electors -Subsection 46(9)

Subsection 46 (9) is new. It requires municipalities under 5,000 to post and publish notice of the location of the polling places and the dates and times for both the regular and advanced polls.

This amendment overlaps, in part, with the amendment to Subsection 41 (2), outlined above. That section now requires all municipalities to post and publish notice of the date and times for the regular and advanced polls (as well as the last day for applying for a proxy certificate).

Subsection 46 (9) repeats this requirement, in part, and adds the requirement for the posting and publishing of the location of polling places.

Clerks of municipalities with less than 5,000 electors could reasonably incorporate these requirements within a single notice.

14. By-laws Under Section 46 - Subsection 46(10)

This subsection is new. It simply specifies that a by-law passed under Subsection 46(8) to provide a single notice to all electors at the same address remains in force until repealed. Previously, without this specific repeal provision there was some confusion as to whether such a by-law had to be passed each election year.

15. Alternative Arrangement for Posting Notice of Poll in Event of Postal Disruption - Subsection 46(11)

Municipalities with over 5,000 electors who are required to mail or deliver notices of the poll to electors (see Subsections 46(7) and (8)) are now provided an alternate arrangement if a disruption in postal services prevents them from complying with the legislation.

The new Subsection 46(11) provides that in the event of a disruption in postal service, the clerk is required to publish the necessary information at least once in a newspaper having general circulation in the municipality.

16. Definition of Electoral Status for Voting Purposes - Subsection 49(4)

This is a new subsection. Like the amendment to Subsection 36 (8) dealing with nomination papers (outlined above), this amendment complements recent amendments to the Education Act and the Assessment Act concerning school support lists and revisions. It provides that for the purpose of voting an elector's school support status is as indicated on the revised list of electors.

17. Keeping a Record of Elector Voting Where Another Person Has Already Voted Under His Name - Section 57.

The revised section is set out below with the added words underlined for emphasis.

57. Where an elector entitled to vote at a polling place applies for a ballot paper and it appears that another person has voted as such elector or that an entry has been made in the polling list in error that such elector has polled his vote, if such person takes an oath in the prescribed form and otherwise establishes his identity to the satisfaction of the deputy returning officer he is entitled to receive a ballot paper and the deputy returning officer shall enter or cause to be entered on the polling list maintained by the poll clerk the name and address of such elector.

Previously, in this situation the elector took an oral oath and received a ballot. With the new requirement that his name be added at the end of the polling list, the likelihood of discrepancies in the election statement should be reduced. Deputy returning officers might be well advised to also add the notation "voted under Section 57 oath".

18. Obsolete Reference Deleted - Subsection 78(1)(d)

Clause 78 (1)(d) referring to Subsection 56 (3) has been repealed. It was rendered redundant with the repeal of Subsection 56 (3) in 1980.

19. Alternative Arrangements for Delivery of Ballot Boxes - Subsections 78(2) and 78(4)

The words "except as otherwise directed by the clerk" have been added to Subsections 78 (2) and 78 (4) which instruct deputy returning officers regarding the immediate delivery of ballot boxes and election documents to the clerk's office after the election.

These amendments have been made in keeping with the intent of Subsection 78 (6) which was designed to give the clerk some discretion to make alternative arrangements for the delivery of ballot boxes to him after the election if circumstances such as bad weather prevent immediate delivery.

20. Clerk's Authority to Open Ballot Box - Subsection 80(2)

This amendment broadens the circumstances under which the clerk is permitted to open the ballot boxes after an election by adding the phrase "or where the clerk considers it necessary to ascertain the meaning of a statement".

21. Judge Permitted to Do a Partial Recount - Subsection 83(2a)

A new subsection has been added to Section 83 governing recount procedures. It gives the judge conducting a recount the authority to determine which of the ballot boxes need to be opened for the purpose of the recount. Previously, if the judge recounted ballots he was required by Subsection 83 (7) to recount all the ballots received by the clerk from the deputy returning officers. Now, if the application for a recount is specific as to where alleged errors have occurred, the judge will have the discretion to open only, or as many of, the ballot boxes from polling subdivisions to which the affidavit of application relates.

22. BILL 142, THE ASSESSMENT AMENDMENT ACT, 1981, c.47, s.24.

List of Electors for New Elections - Subsections 92 (4) and (5)

The provisions of Subsections 92(4) and (5) of the Municipal Elections Act regarding the lists of electors to be used where a new election is required were changed by Bill 142, The Assessment Amendment Act, 1981. The changes were necessary to reflect new procedures governing the census undertaken by the Assessment Division of the Ministry of Revenue, also legislated by Bill 142.

The new Subsections 92(4) and (5) are outlined below:

<p>92(4) Subject to subsection (5), the preliminary list to be used in the year in which a new election is held shall be,</p> <p style="margin-left: 20px;">(a) where the new election is held prior to the 3rd day of November, the polling list prepared for an election held in the immediately preceding year in that polling subdivision but if no election was held in such preceding year in that polling subdivision, a list of electors prepared by the assessment commissioner based on the census conducted in that preceding year together with any revisions made thereto as of the 30th day of September in such preceding year; or</p>	<p style="margin-right: 20px;">List of electors</p>
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(b) where the new election is held on or after the 3rd day of November, a list of electors prepared by the assessment commissioner based on the census conducted by him in that year together with any revisions which have come to his notice as of the 30th day of September in that year,

provided that any list referred to in clause (a) or (b) shall be subject to revision as if it were a preliminary list of electors and sections 24 to 30 shall apply thereto with necessary modifications to the printing or reproduction.

92(5) Where a,

Rules for
list of
electors

(a) new election is required under clause 38(1)(a), 38(2)(b) or subsection 40(4), the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the Thursday following the polling day for the last regular election;

(b) new election is required under section 111, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the receipt by the clerk of the municipality of the copy of the judgment under subsection 111(6);

(c) vacancy otherwise occurs and the council of the municipality or a school board for which the clerk is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the directive, by-law or notice specified in clause (1)(a), (b) or (c); and

(d) by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the order of the Ontario Municipal Board given under section 132 of the Municipal Act, 1981, c.47, s. 24.

R.S.O.
1980
c. 302

23. Increase in Fines for Contravention of the Act - Sections 96 to 103

Sections 96 through 102 used to provide a maximum fine of \$1,000 for the variety of contraventions outlined in those sections. The fine, in each case, has now been increased to \$2,000 consistent with the provisions of the Provincial Offences Act and the Municipal Act (amended earlier to ensure this consistency).

Section 103 regarding penalties for various acts of bribery has also been amended to increase the fine from \$200 to \$2,000 for the same reason. It is noted that the section no longer refers to "summary" conviction. This is also in keeping with the Provincial Offences Act which has replaced the Summary Convictions Act.

24. General Offence Provision - Section 104

This section outlines provisions for fines for a contravention of the Act where no specific penalty is imposed. It has been amended to include contraventions of a Minister's Order under Subsection 42 (4) dealing with the use of voting machines, etc.

And, similar to the above-mentioned instances, the applicable, maximum fine has been increased from \$1,000 to \$2,000, again to maintain consistency with the Provincial Offences Act.

25. General Provision for Penalties for Corrupt Practice -Section 106

Section 106 concerns the procedure to be followed in prosecuting a corrupt practice and the penalties which may be applied where a judge finds someone guilty of a corrupt practice. Contravention of an election campaign financing by-law is a corrupt practice -- see Subsection 121(5). This means that a prosecution for contravention of such a by-law is to be commenced in accordance with Subsection 106(1). The amendment to Subsection 106(2) gives the County Court judge the power to impose the \$2,000 fine mentioned in Subsection 121(5).

26. Time Limit to Bring Action for Contravention of Election Campaign Financing By-laws - Subsection 106(5)

Section 106 provides generally that the time period during which an action can be commenced concerning corrupt practices or controverted elections is ninety (90) days after the date of the poll.

The new subsection has been added to provide a one hundred and eighty (180) day period following the date of an election for commencement of an action against a person contravening a municipal by-law under Section 121 to regulate election campaign financing.

The reason for this is that under Subsection 121(2)(f) candidates have ninety (90) days after the election in which to file their reports. Therefore, additional time must be provided during which it can be established whether the by-law has been contravened, and action commenced.

27. Permissive Authority to Regulate Election Campaign Financing - Section 121

A 1977 amendment to the Municipal Elections Act (Section 121) permitted municipalities to pass by-laws to control election spending. The by-law could require candidates to disclose the names of persons contributing over \$100 to their campaigns and set limits on the total spending by candidates. Section 121 read as follows:

The council of a municipality may by by-law provide for limitations on elections expenditures by or on behalf of a candidate and require the disclosure of all election contributions to his campaign in excess of \$100 in the form of money and goods and services.

Municipalities seeking to control election campaign financing found Section 121 inadequate. Many municipalities requested amendments to the legislation to permit them to pass by-laws to regulate campaign contributions and expenditures effectively.

The new Section 121 is based on the principles and definitions contained in the Provincial Election Finances Reform Act governing provincial election campaigns. It differs fundamentally from the old provision in that it does not permit municipalities to set limits on the total expenditures by a candidate. However, it does continue, in more specific language, the provision regarding the disclosure of the source of contributions valued at more than \$100.

The amendment also provides that such a by-law will require all candidates for council to disclose their sources of funds and their total campaign expenses. It provides that contributions

covered by the by-law do not include voluntary labour or services.

The new section also sets an upper limit of \$500 in any calendar year on the amount that individuals, corporations, associations and trade unions can contribute in the form of money, goods or services and requires the issuance of receipts by the candidate and requires him to keep a record of all his expenses. It also exempts personal or family funds of the candidate.

Provision is made in the new section to empower the clerk to prescribe forms for the purposes of the by-law.

In the new Section 121 specific exclusion of school boards and elected utility commissions is made. It was not considered appropriate to allow municipal councils to establish rules that would regulate campaign contributions and expenditures for candidates to these elected boards.

Prosecution from a contravention of a by-law passed under Section 121 is commenced by an elector under Section 106 (see Item 23 above). Anyone who is found to have contravened the by-law can be fined \$2,000, may lose his office and would not be eligible to run in the next election.

Finally, it should be noted that a by-law passed under the old Section 121 is no longer valid. Any council seeking to regulate election campaign financing will be required to pass a new by-law in accordance with the detailed provisions of the re-enacted section.

This bulletin was prepared in the:

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Ministry of Municipal Affairs and Housing
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